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case.

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**IN THE
COURT OF APPEALS OF INDIANA**

TERRIE L. JAMES,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A04-0701-PC-69
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William E. Young, Judge
Cause No. 49G20-9406-PC-069309

November 28, 2007

MEMORANDUM DECISION ON REHEARING - NOT FOR PUBLICATION

BARNES, Judge

Terrie James petitions for rehearing following our decision in James v. State, No. 49A01-0701-PC-69 (Ind. Ct. App. Sept. 11, 2007). We grant rehearing for the very limited purpose of addressing an inaccuracy in the “Facts” section of our original opinion. In describing the sequence of events during the evening leading up to the search, we stated: “Davis paged James. Davis identified the return caller as James and officers monitored the call during which Davis discussed the sale of cocaine. Davis made a controlled buy from Terrie [James]. Davis then rode with officers and pointed out James and Diane’s townhouse.” James, slip op. at 2-3.

Though Davis did page James that night, and James returned the page, Davis did not make a controlled buy from James, as was incorrectly stated in the opinion. In fact, Davis made a controlled buy at another location in the 2900 block of Delaware Street. Davis then rode with officers and pointed out James’s townhouse. James also points out a typographical omission in our recitation of the probable cause affidavit – the phrase “cocaine an extract of coca” should be inserted at the end of the first sentence of the second paragraph. Subject to these corrections, we reaffirm our original opinion in all respects.

The inaccuracy in our recitation of the facts has no impact on our analysis of the case and does not change the result in this case. We considered the good faith exception and the totality of the circumstances in holding that counsel’s failure to object to the admission of evidence during trial was not prejudicial to James.

The affidavit was sufficient considering the totality of the circumstances. The affidavit indicated Davis was a user of cocaine, was familiar with cocaine, had been

inside the townhouse in the last seventy-two hours, and saw cocaine inside. He identified the occupants of the townhouse as Diane and Terrie and indicated that they possessed and sold cocaine. We relied on the facts in the affidavit and stated:

The affidavit here establishes that Davis had been used successfully as an informant in the past, that the informant was familiar with cocaine, and that the informant had previously been inside the residence to be searched and had seen cocaine in the residence. The informant identified the suspect and his girlfriend by first name. The affidavit states that the suspect and his girlfriend were in control of the residence to be searched. The affidavit provides first name identification of the suspects, states that they are in control of the residence, and states that they sold drugs from inside the residence. Considering the totality of these circumstances, there is little doubt a reviewing court would declare the warrant here had a sufficient basis.

Id. at 8.

In addition, we also relied on the good faith exception to the warrant requirement:

The facts here do not indicate that a reasonable officer would have any reasons to doubt the validity of the warrant or the affidavit that supported it. James does not establish a lack of good faith on the part of the officers who executed the warrant.

Id.

We held that James could not demonstrate that counsel's failure to object to the admission of evidence during trial constituted ineffective assistance and that there was not a reasonable probability that the result of the proceeding would have been different had counsel objected. We therefore affirmed the post-conviction court. This result was not dependent on or colored by the misstatement regarding from whom Davis made the

controlled buy that night. Thus, although we grant rehearing, we affirm our original opinion in all respects.

KIRSCH, J., and ROBB, J., concur.